S.B.CIVIL WRIT PETITION NO.5359/2006

M/s N.S.Textile Processing Industries, Bhilwara
v.
Labour Court, Bhilwara & Anr.

Date of Order :: 1st December, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sudhir Saruparia, for the petitioner.

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This petition for writ is directed to challenge the award dated 17.10.2005 passed by Labour Court, Bhilwara. By the award aforesaid the Labour Court while answering the reference made to it by appropriate government under a notification dated 30.1.2001 held that termination of workman Shri Tarachand amounts retrenchment as defined under Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act of 1947”) and that was effected without adhering mandatory condition precedent for a valid retrenchment, as such while declaring termination of the workman bad the Labour Court directed the petitioner employer to reinstate the workman in service with 50% of total back wages.

While assailing validity of the award impugned it is contended by counsel for the petitioner that the Labour Court erred while treating the respondent as a workman as defined under Section 2(s) of the Act of 1947 for the reason that the respondent was working as Supervisor having wages of more than

Rs.1600/-. According to counsel for the petitioner the Labour Court failed to appreciate the statement of Shri Pravin Bhora asserting that Shri Tarachand was discharging the duties of Supervisor and not of maintenance jobber.

Heard counsel for the petitioner and also perused the award impugned as well as other documents placed on record alongwith petition for writ.

The Labour Court in paras 8 and 9 of the award impugned considered in detail the issue with regard to nature of work of respondent Shri Tarachand and by taking into consideration the entire evidence available on record reached at the conclusion that Shri Tarachand was not working in supervisory capacity, but was in employment of the petitioner as a workman. While dealing with the statements of Shri Pravin Bhora the Labour Court held that the employer failed to produce any order of promotion and Shri Pravin Bhora in cross examination accepted that no order of promotion was issued in writing. The Labour Court has also taken into consideration the fact that a person having diploma in engineering is eligible to be appointed as Supervisor but no such diploma was possessed by Shri Tarachand and, therefore, his appointment as Supervisor was not possible. The Labour Court in quite unambiguous terms found that the employer failed to produce sufficient evidence to

prove that Shri Tarachand was working as a Supervisor, on the contrary the duties of Shri Tarachand as a workman are proved.

I do not find any such error in finding given by the Labour Court that may warrant interference of this Court under Articles 226 and 227 of the Constitution of India. It is well settled that this Court while exercising powers under Articles 226 and 227 of the Constitution of India must not interfere with an order/judgment/award of the subordinate court if that does not suffer from any error apparent on face of record. Counsel for the petitioner utterly failed to point out any such error and, therefore, I do not consider it appropriate to interfere with the award impugned in extraordinary jurisdiction of this Court.

The petition for writ is accordingly dismissed.

(GOVIND MATHUR),J.

kkm/ps.